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## THE COLOMBIAN PEACE ACCORD: A BEACON OF HOPE IN A DARK YEAR FOR HUMAN RIGHTS

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The 10<sup>th</sup> of December is “Human Rights Day”: on this day, now 68 years ago, the United Nations General Assembly adopted the Universal Declaration of Human Rights in the *Palais de Chaillot* in Paris. However, there is not much to celebrate this year. War crimes and crimes against humanity committed in Syria and many other conflicts around the world have become a daily reality. Nationalism and populism are on the rise worldwide, the fight against terrorism has put pressure on the delicate balance between security and human rights, and the gap between the rich and the poor is widening every single day. And yet there are some beacons of hope. The Colombian peace accord is one of them.

On the 30<sup>th</sup> of November, the Congress of Colombia approved with an overwhelming majority a revised peace accord between the Colombian government and the guerrilla group FARC. This paves the way for Colombia to end a conflict that has lasted more than 50 years and has cost more than 220.000 lives. The successful outcome of the peace negotiations was not a certainty, given the recent negative outcome of the referendum that left the nation in shock. One of the most controversial aspects is the question of whether or not the Havana Accord – which the warring parties concluded earlier this year – leaves the victims in the cold. Some claim that the Accord brings forth impunity and grants amnesty for the most horrific crimes. But is this really the case?

In comparison to earlier peace processes in Colombia and elsewhere in the world, the peace process of Havana has adopted an unprecedented and innovative approach. From the start of the negotiations in 2012, the negotiators have given the victims the leading role. This is highly exceptional. The victims were invited to participate at the negotiation table in Havana, their proposals were seriously considered and the agreed upon system of transitional justice is framed within victims’ rights to truth, justice, and reparation. The negative outcome of the referendum in October 2016, which rejected the first accord, proved a chance to hold a national dialogue in an attempt to reach a greater consensus on the Accord.

The peace accord includes a system for truth, justice, reparation, and non-repetition. This system constitutes a comprehensive approach to transitional justice and guarantees victim participation in the different envisaged mechanisms. Transitional justice refers to the attempts of a society to come to terms with past abuses through mechanisms such as truth commissions, tribunals, reparation measures and institutional reform. Inspired by the South African experience, the Havana Accord places a strong emphasis on truth-telling through the creation of a truth commission. This commission will be accompanied by a separate judicial system for



the prosecution of guerrilla members and members of the armed forces that played a considerable role in the armed conflict. Contrary to a mere traditional criminal justice system that primarily focuses on the punishment of the perpetrator and often loses sight of the needs of the victims, a mixed model is adopted that takes a favourable stance towards a restorative justice approach. The main goal is to create a dialogue between the victims, members of society and perpetrators, in order to fulfil victims' rights. It also seeks to contribute to reconciliation and re-integration of victims and perpetrators in Colombian society. For this purpose, it is crucial that perpetrators take up responsibility for their actions and for repairing the harm that they have caused. In order to achieve this, the judicial system is based on the degree of recognition of truth and responsibility by the perpetrator. The sanctions imposed on those perpetrators that fully acknowledge these two aspects will have reparative and restorative functions. This entails that the perpetrators will participate in reparation programmes that benefit the victims and society at large. Examples are participation in rural development programmes and programmes for the construction and reparation of infrastructures in rural and urban areas. The goal of these innovative sanctions goes beyond the punishment of the offender and contributes to transforming Colombia into a peaceful society. However, when there is a lack of acknowledgment of truth and responsibility, the perpetrator will be prosecuted according to Colombian criminal law and the effective deprivation of liberty can be between 15 to 20 years. The accord is one of the first of its kind to explicitly exclude the granting of amnesties and pardon for international crimes. Moreover, FARC as an organisation takes up collective responsibility for its victims. This entails specifically that FARC will contribute to material and integral reparation of its victims.

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Lastly, it is worth mentioning that the Colombian peace process has benefitted from extensive international support, which can be considered as one amongst other enabling factors for this successful peace process. Notwithstanding, the peace process is characterised by strong local ownership, considering that the negotiations took place directly between the two parties without external mediation or arbitration. The European Union, as the first regional organisation to adopt a dedicated strategy towards transitional justice in 2015, has joined in by, among other things, nominating a Special Envoy for the Peace Process and launching a trust fund for peace in Colombia. On Human Rights Day, President Santos received the Nobel Prize for Peace, which he dedicated to the victims of the Colombian armed conflict.

The victim-centred and restorative justice approach of the Havana Accord is unprecedented and innovative. It has the potential to become an important example for future peace processes. Although no peace accord can satisfy everyone, it constitutes an ambitious path forward for Colombia. The Accord is not the end of the search for peace and reconciliation in Colombia, considering that the most important phase, its implementation, still has to properly start. But it does constitute a beacon of hope in a dark year for human rights.

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